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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/430,687	10/29/1999	J. MICHAEL GREGSON	APPLDIG.014A	7627

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EXAMINER

HA, YVONNE QUY M

ART UNIT	PAPER NUMBER
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2697

DATE MAILED: 11/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/430,687

Applicant(s)

GREGSON, J. MICHAEL

Examiner

Yvonne Q. Ha

Art Unit

2697

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 5-7, 11, 12, 18, 19, 20, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Schulman (US Patent 5,600,632).

Referring to claims 1, 11, 12, and 19, Schulman disclosed a plurality of network analyzers (col. 6, lines 26-29) with the first and second analyzers are in data communication (col. 6, lines 29-30), each of the network analyzers is synchronized with the others to provide consistency in the application). The computer is configured to command the two analyzers and collect diagnostic data (col. 4, lines 51-54, data from all of the analyzers is aggregated and sorted chronically and a variety of processing performed and download data via a dial up workstation).

Referring to claim 2, Schulman further taught the analyzers are placed at network boundary (col. 5, lines 20-22 inferring network topology from analyzers placed at selected points throughout the network.)

Referring to claims 3 and 20, Schulman further taught the network consists of ATM, Frame Relay, Internet, ISDN, and SONET (see figure 3).

Referring to claims 5, 6, 18, and 22, Schulman further taught the analyzers capture the communication parameter including packet loss and latency (col. 4, line 65; col. 5, line 5).

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Referring to claims 8-10, and 14, Schulman disclosed all aspects of the claimed invention except failed to disclose the parameter deviation, based on a predetermined base line and issue an alert. However, Bencheck et al disclosed an alert indicating that a performance monitoring parameter has exceeded a predefined threshold (col. 16, lines 20-23). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use the base line as a benchmark to set limits and alarm the network when exceeding. One of ordinary skill in the art would have been motivated to use a predetermined base line and issue alert because it is part of the trouble isolation process and detect failure before experiencing network degradation.

Referring to claim 15, Schulman disclosed all aspects of the claimed invention except failed to disclose the statistical average of a parameter for the same time, day and location. However, Bencheck et al disclosed the process of determining the location of the origin of the defect along the path (col. 16, lines 28-30). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to collect statistical data on the same day, time and location because it will give a true picture of an event for an occurrence. It would assist the operator to narrow down the troubleshooting scope of the network.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Schulman (US Patent 5,600,632) disclosed methods and apparatus for performance monitoring using synchronized network analyzers.

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3. Referring to claim 7, 16, 17, and 23, Schulman further taught to configure non-intrusive data into the network (col. 7, lines 35-38, selection of relevant packet and permits a certain subset of packets to be selected for analysis and processing to the exclusion of unwanted information).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4, 13, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulman (US Patent 5,600,632) in view of Engdahl et al. (US Patent 5,691,976).

Referring to claims 4, 13, and 21, Schulman disclosed all aspects of the claimed invention and further taught the analyzers have a connection to a telephone network that can dial up to a common reference for synchronization purpose. Schulman failed to disclose the FDL between the analyzers and computer. However, Engdahl et al disclosed the FDL for capturing the FDL channel data in every DS1 channel that tie to the clock lines (col. 32, lines 11-14). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use this type of link to achieve non-intrusive signal by means of synchronizing the link (part of the frame within the link). One of ordinary skill in the art would have been motivated to use FDL to achieve a bit for bit comparison with a protect path to provide 1:1 fault protection in the system.

5. Claims 8-10, 14 and 15, are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulman (US Patent 5,600,632) in view of Bencheck et al. (US Patent 5,796,723).

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- Bencheck et al. (US Patent 5,796,723) disclosed the system and method for end-to-end threshold setting.
- Engdahl et al. (US Patent 5,691,976) disclosed the performance monitoring and test system for a telephone network

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne Q. Ha whose telephone number is 703-305-8392. The examiner can normally be reached on Mon-Fri. 7:00 a.m.- 4:00p.m. Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky Ngo can be reached on 703-305-4798. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3988 for regular communications and 703-305-9508 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

YQH
November 1, 2002


RICKY NGO
PRIMARY EXAMINER